The opinion in support of the decision being entered today
was **not** written for publication in and
is **not** binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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**Ex parte** SCOTT E. KLOPPENSTEIN

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Appeal No. 2005-2598
Application No. 09/506,873

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ON BRIEF

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Before: BARRETT, LEVY, and NAPPI, **Administrative Patent Judges.**

NAPPI, **Administrative Patent Judge.**

## DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the final rejection of claims 1 through 20 and 24 through 29, which constitute all the claims in the application. For the reasons stated *infra* we affirm-in-part the examiner's rejection of these claims.

## Invention

The invention relates to a system for acquiring program guide information from one of a plurality of broadcast channels involving identifying an individual broadcast channel in response to user entry of either a virtual channel number or a transmission channel number. The system is tuned to receive the identified broadcast channel and packetized program information. See page 2 of appellant's specification.

Claim 1 is representative of the invention and reproduced below:

1. In a video decoder, a system for acquiring information comprising a program conveyed on one of a plurality of broadcast channels, comprising the steps of:

identifying an individual broadcast channel of said plurality of broadcast channels in response to user entry of either of, (a) a first channel identification number and (b) a different second channel identification number;

tuning to receive said identified individual broadcast channel wherein said tuning processes comprises the steps of:

determining said identified broadcast channel as being either analog or digital;

acquiring program guide information transmitted on said identified broadcast channel, wherein said program guide information is transmitted in the vertical blanking interval (VBI) of said identified broadcast channel when determined to be analog, and said program guide information is received from packetized program information of said identified broadcast channel when determined to be digital;

acquiring said packetized program information comprising a program conveyed on said individual broadcast channel using said acquired program guide information; and

processing said packetized program information to be suitable for display.

## References

The references relied upon by the examiner are:

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|---|---|---|
| Wugofski et al (Wugofski) | US2003/0056216A1 | Mar. 20, 2003 (filed Jan. 5, 1998) |
| Alten et al (Alten) | US2002/0049973A1 | Apr. 25, 2002 (filed Jul. 13, 1998) |
| Sugiyama | 6,313,886 | Nov. 6, 2001 (filed Mar. 31, 1999) |
| Schneidewend et al. (Schneidewend) | 6,249,320 | Jun. 19, 2001 (filed Dec. 22, 1998) |
| Vancelette | 5,894,320 | Apr. 13, 1999 |
| Newberry et al. (Newberry) | 5,625,406 | Apr. 29, 1997 |
| Klosterman | 5,550,576 | Aug. 27, 1996 |

## Rejection at Issue

Claim 24 stands rejected under 35 U.S.C. § 102 (e) as anticipated by Schneidewend.

Claims 1 through 6 and 8 through 11 stand rejected under 35 U.S.C. § 103 (a) as being unpatentable over Sugiyama in view of Newberry.

Claims 12 through 14, 16, and 18 through 20 stand rejected under 35 U.S.C. § 103 (a) as being unpatentable over Klosterman in view of Sugiyama.

Claim 7 stands rejected under 35 U.S.C. § 103 (a) as being unpatentable over Sugiyama in view of Newberry and Vancelette.

Claim 15 stands rejected under 35 U.S.C. § 103 (a) as being unpatentable over Klosterman in view of Sugiyama and Vancelette.

Claims 25 through 29 stand rejected under 35 U.S.C. § 103 (a) as being unpatentable over Schneidewend in view of Alten.

Claim 17 stands rejected under 35 U.S.C. § 103 (a) as being unpatentable over Klosterman in view of Sugiyama in view of Wugofski.

The rejections are set forth in the final Office action dated November 3, 2004. Throughout the opinion we make reference to the briefs, the answer and the final Office action for the respective details thereof.

**Opinion**

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, appellant's arguments set forth in the briefs along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

With full consideration being given to the subject matter on appeal, the examiner's rejections and the arguments of appellant and the examiner, and for the reasons stated *infra* we sustain the examiner's rejections of claims 1 through 20 under 35 U.S.C. § 103 (a). However we will not sustain the examiner's

rejection of claims 24 under 35 U.S.C. § 102 (e), nor will we sustain the examiner's rejection of claims 25 through 29 under 35 U.S.C. § 103 (a).

**Rejection of claim 24 under 35 U.S.C. § 102 (e).**

Appellant presents several arguments on page 10 through 13 of the brief and pages 10 through 11 of the reply brief as to why the rejection of claim 24 under 35 U.S.C. § 102 is improper. On page 11 of the reply brief, appellant argues:

> Schneideweld [sic] et al. specifically discloses displaying the major and minor identifiers along with the broadcaster in a list. The Examiner's Answer asserts, Schneideweld [sic] et al. disclose displaying the physical transmission channel when the major number selected is that same as the RF channel. However, the present claimed invention recites the display of "the physical transmission number corresponding to said virtual channel identification number ... **with** said virtual channel identification number" (Claim 24). The present claimed invention clearly recites **two separate displays.** The numbers within the two separate displays are irrelevant. The Examiner's Answer asserts that if the numbers of the virtual channel and the physical transmission are one and the same then this constitutes the display of both numbers. However, even if the number of the virtual channel and the physical transmission are the same, the present claimed invention still provides two separate displays to display the same number. However Schneideweld [sic] et al. would only suggest one display number for the major number and still omit any type of second display for the physical transmission number.

We concur with appellant. While we concur with the examiner's finding on page 5 of the answer, that Schneidewend teaches that the major identifier (virtual channel) may correspond to the broadcast channel. We disagree with the examiner's finding on page 6 of the answer that this teaches that both the virtual channel number and the broadcast channel are displayed. Claim 24 contains

the limitation "wherein the physical transmission number corresponding to said virtual channel identifier is displayed with said virtual channel identifier number." We consider this limitation to require the display to two pieces of data, the physical transmission number and the virtual channel number. Schneidewend's display is depicted in figure 12. We find that only the major channel number, and if present minor channel number, are displayed. We do not find that either figure 12 or the accompanying text describing Schneidewend's invention teach displaying the physical transmission number and the virtual channel. Accordingly, we will not sustain the examiner's rejection of claim 24.

**Rejection of claims 25 through 29 under 35 U.S.C. § 103 (a).**

The examiner's rejection claims 25 through 29 under 35 U.S.C. § 103 (a) as being unpatentable over Schneidewend in view of Alten is set forth on pages 14 through 17 of the final Office action. Claims 25 through 29 are dependent upon independent claim 24. The examiner does not assert, nor do we find that Alten teaches or suggests displaying the displaying the physical transmission number and the virtual channel as claimed in claim 24. Accordingly, we will not sustain the rejection of claims 25 through 29 for the reasons stated *supra* with respect to claim 24.

**Rejection of claims 1 through 6, and 8 through 11 under 35 U.S.C. § 103 (a)**

The examiner's rejection of claims 1 through 6 and 8 through 11 under 35 U.S.C. § 103 (a) as being unpatentable over Sugiyama in view of Newberry is set forth on pages 4 through 8 of the final Office action.

On page 15 of the brief, appellant argues that the Sugiyama does not teach the claimed step of determining if a broadcast channel is analog or digital. Rather, appellant asserts that Sugiyama is "merely concerned with tuning a channel having either a PSIP [Program and System Information Protocol] transport stream or a non-PSIP transport stream. Therefore, the purpose of the system is to provide an apparatus and method for receiving two different types of digital transport streams each having different structure, PSIP versus non-PSIP."

The examiner responds, on page 7 of the answer stating:

> [A]s shown in Fig. 4, Sugiyama discloses a system with a single tuner for tuning to a channel (Fig. 4, tuner 404; column 4, lines 12-17) and wherein the received signal is then received and processed by either an analog demodulator or a digital demodulator (column 4, lines 12-22). As the analog and digital signals are handled and processed completely separately (see Fig. 4 and column 4, lines 12-22), some "determination" must take place in some form in that only one the two types of demodulators will act upon the signal and process it. Further, Sugiyama specifically discloses wherein the output signals from either the analog video processing circuit or the video decoder are **selectively** connected to video display, under control of the control circuit (column 4, lines 46-49). The active *selection* of a digital decoder output over the analog is clear indication that some determination has taken place to selectively make that decision.

We concur with the examiner's findings that Sugiyama teaches handling both analog and digital signals, and that the control circuit selectively connects the analog video processor. See column 4, lines 46-49. We consider the step of selectively connecting the analog processor to process analog signal to implicitly contain a step of determining if the signal is analog or digital. Further, appellant's argument concerning Sugiyama determining whether a digital signal PSIP or non-PSIP is not well taken, as we find that Sugiyama teaches determining whether the signal is analog or digital and there is no claim limitation which precludes an additional step of differentiating between digital PSIP and non-PSIP.

Appellant argues on page 16 of the brief, that Sugiyama does not teach acquiring the program guide information from the vertical blanking interval when the signal is determined to be analog and from the packetized program information when the broadcast channel is determined to be digital.

We disagree with appellant. The examiner states on page 4 of the final Office action that Sugiyama teaches acquiring the program guide information when the broadcast channel is digital. On page 5 of the final Office action the examiner states that though Sugiyama makes a determination of the signal being analog, Sugiyama does not address the program guide information being in the vertical blanking interval of the analog signal, and that Newberry does teach this limitation. We concur with the examiner's findings. As stated *supra* we find that Sugiyama teaches determining if the signal is analog or digital and selectively

coupling the appropriate decoder. The claimed term "program guide information" is discussed on page 6 of appellant's specification as acquired and assembled interlinked tables. Sugiyama teaches that in column 2, lines 23-34, PSIP data is in the form of tables such as a master guide table, event information table, virtual channel table and Packet Identifier Data (PID). Sugiyama teaches that the control circuit and demultiplexer (which is selected to operate on digital signals) use this information to display the selected program. See column 6, lines 1-9. The PID is then used to select the Packetized Elementary Stream (PES), the actual data to be displayed or heard, to generate a program to be displayed. See column 6, line 52-55. Thus, we find that Sugiyama teaches when the communications channel is determined to be digital, the program guide is acquired from the packetized information and the packetized information is used to acquire the program to be displayed. As the examiner states, Sugiyama is silent as to the program guide information in analog signals.

We concur with the examiner's finding that Newberry teaches that analog signals contain the program guide information in the vertical blanking interval. We find that Newberry teaches a system for generating a single program guide from multiple video signals, either digital or analog signals. See abstract. Newberry teaches that the analog signals contain the information in the vertical blanking interval. See column 3, lines 30-37.

Appellant argues on pages 16 and 17 of the brief Sugiyama does not teach "acquiring said packetized program information comprising a program conveyed on said individual broadcast channel using said acquired program guide information," as Sugiyama does not determine if the signal is digital or analog rather whether the signal is PSIP or not.

We are not convinced by appellant's arguments. As stated *supra*, we find that Sugiyama teaches determining if the broadcast channel is digital or analog. Further, as stated *supra*, we find that Sugiyama teaches the program information contained in the digital signal is used to select the packetized data to be presented by the user.

Appellant argues on page 17 of the brief:

> Newberry et al., similarly to Sugiyama, neither disclose nor suggest "identifying an individual broadcast channel of said plurality of broadcast channels in response to either of (a) a first channel identification number and (b) a different second channel identification number" as in the present claimed invention.

Further, appellant argues Newberry teaches obtaining the guide information and displaying it with a video signal which is unlike the claimed invention.

We disagree with appellant. We note that appellant has identified no limitation which precludes Newberry's display of video with the guide information. We note that the limitations concerning the identification of a broadcast channel is in the alternative, thus, only one of the features must be taught by the reference to meet the claim limitation. As the examiner identifies on page 4 of the final Office action, Sugiyama teaches the limitation of "identifying an

individual broadcast channel." We find that Sugiyama in figures 6, 11, 12 and the accompanying description in column 7 teach a user identifying a broadcast channel by entering a first channel identification number.

Appellant argues on page 18 of the brief, that there is no motivation to combine the references as asserted by the examiner.

The examiner responds on page 9 of the answer, stating:

> In this case, Newberry discloses a hybrid system which can access both analog and digital channels, and the ability to acquire program guide information from both types of channels for the benefit of allowing a user of a hybrid system to access program guide for all of their received analog and digital channels (See Newberry at column 1, lines 65 column 2, line 8).
>
> Further, it is noted that while Sugiyama specifically teaches extracting program guide information from digital channels, this in no way implies a specific desire to avoid using analog program guide information. It is incorrect to assume that simply because Sugiyama is silent in regards to the details of the analog channels that there would be no reason or motivation to add analog information to Sugiyama's system.

We concur with the examiner's reasoning. Our reviewing court stated in **In re *Lee,*** 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002), that when making an obviousness rejection based on combination, "there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by Applicant" (quoting ***In re Dance***, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998)). "The motivation, suggestion or teaching may come explicitly from statements in the prior art, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved." ***In re Huston,*** 308 F.3d 1267, 1278, 64 USPQ2d 1801, 1810 (Fed. Cir. 2002, citing ***In re Kotzab,*** 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed.

Cir. 2000). In this case we concur with the examiner that the nature of the problem to be solved provides motivation to combine the references. We consider the problem to be solved in Sugiyama is to provide an apparatus which allows tuning to television channels in a plurality of formats, PSIP and non-PSIP, digital and analog. See Sugiyama column 1, lines 13-17, lines 48-57 and column 2, lines 56 to 60. We find that the problem to be solved in Newberry is to provide a unified program guide which is compatible with hybrid systems receiving both analog and digital signals. Thus, we consider Newberry to provide suggestion to be used with tuners such as Sugiyama's that can receive signals in a plurality of formats.

Appellant argues on page 19 of the brief that even if there is motivation to combine the references, the combination of references do not teach "determining said identified broadcast channel as being analog or digital" or that the "'acquire program information' is then used for 'acquiring said packetized program information comprising a program.'"

We are not persuaded by appellant's arguments, as stated *supra,* we find that Sugiyama teaches these limitations.

Appellant presented no additional arguments directed to these claims in the reply brief.

For the forgoing reasons we sustain the examiner's rejection of claim 1 under 35 U.S.C. § 103 (a) as being unpatentable over Sugiyama in view of Newberry. On page 20 of the brief appellant groups claims 2 through 6 and 8

through 11 with claim 1 and accordingly, we sustain the examiner's rejection of claims 2 through 6 and 8 through 11 for the reasons given with respect to claim 1.

**Rejection of claim 7 under 35 U.S.C. § 103 (a)**

The examiner's rejection of claim 7 under 35 U.S.C. §103 (a) as being unpatentable over Sugiyama in view of Newberry and Vanecelette is set forth on pages 12 and 13 of the final Office action.

Appellant argues on pages 25 and 26 of the brief, that claim 7, which is dependent upon claim 1, is patentable for the reasons asserted with respect to claim 1. Further, on page 26 of the brief, appellant asserts that Vancelette does not teach a "second channel identification number is comprised of two elements, a major number and a minor number, and in the absence of user entry of the minor number a default number is used" as is claimed. Appellant asserts on page 27 of the brief:

> Vancelette merely discloses processing audio and video signals from a plurality of cameras able to capture audio and video data for broadcasting thereof. A control message is encoded and transmitted with the audio and video data feeds and contained in this control message is a default channel or default primary signal to be initially displayed on a television. The default channel or signal, however, is wholly unlike using "in absence of user entry of said minor number a default minor number is used" as in the present claimed invention. The default channel in Vancelette refers to an initial signal to be displayed and has nothing to do with "identifying a individual broadcast channel of said plurality of broadcast channels in response to a user entry of ... a different second channel identification number" as in the present claimed invention.

Further, appellant argues, on page 28 of the brief, that there is no motivation to combine the teachings of Sugiyama in view of Newberry and Vancelette and that if the references were combined the combination would not teach the claimed invention.

In response, the examiner states, on page 14 of the answer:

> Sugiyama discloses a channel identification number consisting of a major number (corresponding to broadcast channel; column 1, lines 35-47) and a minor number (corresponding to sub channel; column 1, lines 35-47).
>
> Vancelette discloses a broadcast channel consisting of a plurality of sub-channels (column 6, lines 6-24 and column 11, lines 20-40) and wherein once user enters only the broadcast channel (column 6, lines 32-37) a default sub-channel is selected and displayed (column 6, lines 32-37).
>
> It is the combination of Sugiyama and Vancelette which would result in the claimed invention by a user only entering the major channel number (corresponding to the broadcast channel of Sugiyama) and thereupon receiving a default one of the sub-channels (as taught by Vancelette).

We are not convinced by appellant's arguments. While we concur with appellant that the different video signals are different camera angles of an event, there are nonetheless different broadcasts. As the examiner identifies, both Sugiyama and Vancelette teach channel entry by major channel and minor channel (sub-channel). Contrary to appellant's arguments, we do not find that Vancelette is limited to the default channel being the initial channel displayed, but rather Vancelette teaches that "assume the viewer has not yet entered any commands to the user interface [commands identify the sub-channel] other than selecting the primary channel to view. The microprocessor will then determine

which audio and video packets in the received data stream correspond to the primary signals [default programming] of the particular programming service provider. " See column 10, lines 25-30. Thus, we concur with the examiner's finding that Vancelette discloses that in the absence of a user entering a sub-channel number, a default minor (sub-channel) is selected. Further, we find that the very nature of Sugiyama's teaching of using a default if there are sub-channels provides motivation to combine with Sugiyama. As stated *supra*, we find that Sugiyama teaches identifying PSIP channels by major and minor number. Sugiyama is silent as to what happens if there is an incomplete data entry. We consider that a skilled artisan would recognize that using a default sub-channel, as taught by Vancelette, is a solution to the problem of an incomplete data entry in Sugiyama and would be motivated to so modify Sugiyama.

Appellant presented no additional arguments directed to these claims in the reply brief.

For the forgoing reasons we sustain the examiner's rejection of claim 7 under 35 U.S.C. § 103 (a) as being unpatentable over Sugiyama in view of Newberry and Vancelette.

**Rejection of claims 12 through 14, 16, and 18 through 20 under 35 U.S.C. § 103 (a)**

The examiner's rejection of claims 12 through 14, 16 and 18 through 20 under 35 U.S.C. § 103 (a) as being unpatentable over Klosterman in view of Sugiyama is set forth on pages 8 through 12 of the final Office action.

Appellant argues, on page 21 of the brief, that while Klosterman does discloses acquiring a plurality of program guides from different sources, Klosterman does not teach acquiring either a first program guide or a second program guide different from the first where the program guides contain information mapping a first broadcast channel member to a first different channel number. Appellant asserts that "the channel map disclosed by Klosterman is not the equivalent to 'information mapping a first broadcast channel number to a first different channel number,'" rather Klosterman's channel map identifies the available channels and their source. Thus, appellant asserts that Klosterman does not teach "'tuning to received packetized information in said first different channel in response to user entry of said first broadcast channel number using said acquired program guide' as in the present invention."

In response, the examiner states on page 10 of the answer, "it is noted that the Office Action admitted that Klosterman lacks the missing claimed features, Sugiyama was relied upon to disclose those specific features." Further, the examiner states:

> Sugiyama was relied upon to teach the usage of program guide information which conforms to the PSIP protocol. As shown by Sugiyama,

> this protocol specifically teaches mapping a first broadcast number to a second broadcast number (for example, broadcast channel 38 has been mapped to channels 4.1 and 4.2 as shown in Fig. 1 and column 1, lines 35-58).

We concur with the examiner. We find, as appellant asserts, that Klosterman teaches acquiring a program guide from several sources. Klosterman teaches in column 5, lines 50-66, that the program guide information can come from numerous sources and in varying formats and is mixed together to make a unitized guide. While we concur with the appellant's argument that Klosterman lacks a teaching that the information in the program guide includes a "mapping a first broadcast channel number to a first different channel number," we concur with the examiner that Sugiyama teaches this limitation. We find that Sugiyama teaches that some broadcasts in PSIP are on a different channel then the broadcast channel and the PSIP information (which as discussed with respect to claim 1 meets the claimed program guide information) identifies the mapping of the virtual channel to physical channel. See figure 1, example of physical channel 38 mapping to digital channel 4.1 and 4.2; see also column 1, lines 35 through 55. While Sugiyama, only discusses one example of this, we do not find that Sugiyama is teaching that there is only one PSIP channel, rather Sugiyama appears to provide only one example for each type of channel format that the tuner can receive. Thus, we see no reason why there would not be more than one PSIP channel and associated program guide.

Claim 12 contains the limitations of "acquiring a first program guide containing information mapping a first broadcast channel number to a first

different channel number, said acquired program guide being one of a plurality of different available program guides; acquiring a second program guide, different from said first program guide, containing information mapping said second broadcast channel number to a second different channel number, said acquired program [guide] being on of said plurality of different available program guides." Thus, claim 12 requires obtaining two different program guides which contain mapping from two different channels to two different broadcast channels. We consider Sugiyama's teaching of guide information on each PSIP channel and that PSIP channels contain different broadcast channels to meet the individual "acquiring" limitations. We find that Klosterman teaches that the different channels can have different guides. Accordingly, we find that the combination of Sugiyama and Klosterman teach these limitations.

Appellant argues, on page 22 of the brief, that Sugiyama teaches tuning into different data streams and that this is not the equivalent of acquiring program guides as claimed. Further, appellant argues that Klosterman similarly does not teach acquiring guides that contain information mapping a broadcast channel to a different channel number as claimed.

The examiner responds on pages 10 and 11 of the answer:

> Klosterman was the reference relied upon to disclose a system which receives multiple program guides. Klosterman did not specifically disclose wherein the multiple program guides it received contained mapping information mapping a first channel to a second.
>
> Sugiyama was then relied upon to teach acquiring [a] program guide which contains "information mapping a first broadcast channel

> number to a first different channel number", as shown [in] the *standard* protocol for PSIP.
>
> It is the combination of Klosterman and Sugiyama which teaches acquiring a first and second program guide (as shown in Klosterman), wherein the acquired program guides contain mapping information mapping a first channel to a second channel (as shown in Sugiyama to conform with the PSIP standard).

We concur with the examiner's rationale. As stated *supra* we find that the combination of Sugiyama and Klosterman teach the limitations of acquiring a first program guide and a second program guide where each contains information mapping a broadcast channel to a different channel.

On pages 22 and 23 of the brief, appellant argues that Sugiyama does not teach tuning to receive packetized program information, rather Sugiyama teaches that "a user selecting a channel and a tuner tuning to the channel, and upon tuning the selected channel, the device determines whether the transport stream is either PSIP stream or a non-PSIP stream."

The examiner responds, on page 11 of the answer, asserting "Sugiyama discloses wherein a user will enter a first broadcast channel number (for example, virtual channel 4.1, see column 7, lines 5-49). The system itself will then tune to the physical channel selected by the user (in this case, 4.1 corresponds to physical channel 38, see Fig. 1, column 7, lines 39-49, column 1, lines 35-58 and Fig. 1)."

We concur with the examiner. Claim 12 includes the limitation of "tuning to receive packetized program information transmitted on said first different

channel in response to user entry of said broadcast channel number using said acquired program guide." In the example from Sugiyama, which the examiner relies upon, channel 4.1 is the channel selected by the user and channel 38 is the channel to which the tuner is tuned. Sugiyama discloses in the digital format PSIP the physical channel number can be different then the broadcast channel number, see e.g. figure 1 the PSIP format channels 4.1 and 4.2 are on physical channel 38, see also column 6, lines 65-67. Further, Sugiyama teaches that both the digital formats contain information to collect and recover the program data that is sent to the video and audio decoders; we consider this necessarily requires that the tuner be tuned to the channel, which contains the data. See column 2, lines 17-23, column 6, and lines 52-55.

Appellant further argues on page 23 of the brief:

> Sugiyama discloses obtaining major channel and minor channel numbers only in the case of a PSIP transport stream, but goes on to clearly state that "[t]he major channel number and minor channel number(s) will be reproduced, together with audio and video, on the television set" (column 6, lines 29-33). Thus, if both channel numbers are produced on the television set, the system disclosed by Sugiyama does not tune to receive "packetized program information transmitted on said different channel in response to user entry of said first broadcast channel number using said acquired program guide" as is in the present claimed invention.

We are not persuaded by this argument, as it is the virtual channel (channel 4.1) and the physical channel (channel 38) that the examiner is relying upon in the rejection not the major channel (4) and minor channel (.1) displayed as 4.1 (which is what we consider to be taught in Sugiyama column 6, lines 29-33).

On pages 23 and 24 of the brief, appellant argues that there is no motivation to combine Sugiyama and Klosterman. Appellant argues that in Sugiyama "there is no information at all contained in the non-PSIP stream, which is the ultimate purpose of Sugiyama, to produce a channel map from that type of transport stream. Therefore, tuning of transport streams in Sugiyama is not related to merging program guides from different sources as disclosed in Klosterman et al."

On page 10 of the final rejection, the examiner states that one would be motivated to combine Sugiyama and Klosterman, as Klosterman teaches merging program guides and using the information from PSIP channels as taught by Sugiyama for the typical benefit of implementing a known standard to allow related program channels to be grouped together." Further, on page 12 of the answer, the examiner further states that the advantage would be it "further allows the user of virtual channel mapping allowing related channel to be grouped together."

We concur with the examiner. We find that one of ordinary skill reviewing Klosterman's teaching of combining program guides from several sources both analog and digital would consider that the program guide information can be in one of many common formats. Further, we find that Sugiyama teaches that one format that contains program guide information is PSIP. Thus, regardless of whether non-PSIP contains the program guide, Sugiyama teaches that PSIP does contain the program guide and we find that a skilled artisan would consider

modifying Klosterman's device to make use of the PSIP program guide information.

Finally, appellant argues on page 24 and 25 of the brief, that even if Klosterman and Sugiyama were properly combined the combination does not teach acquiring the first and second guide with mapping information as claimed.

We are not persuaded by this argument. As stated *supra* we consider to combination of Klosterman and Sugiyama to teach acquiring the first and second guide with mapping information as claimed.

Appellant presented no additional arguments directed to these claims in the reply brief.

Accordingly, we sustain the examiner's rejection of claim 12 under 35 U.S.C. § 103 (a).

Claims 13, 14, 16 and 18 through 20 are dependent on claim 12. On page 25 of the brief, appellant groups these claims with claim 12. Accordingly we sustain the examiner's rejection of claims 13, 14, 16 and 18 through 20 under 35 U.S.C. § 103 (a) for the reasons given with respect to claim 12.

**Rejection of claim 15 under 35 U.S.C. § 103 (a)**

The examiner's rejection of claim 15 under 35 U.S.C. § 103 (a) as being unpatentable over Klosterman in view of Sugiyama and Vancelette is set forth on pages 13 and 14 of the final Office action.

Appellant's arguments on pages 30 through 33 are similar to the arguments discussed above with respect to the examiner's rejection of claim 7 under 35 U.S.C. § 103 (a) as being unpatentable over Klosterman in view of Sugiyama and Vancelett.

Claim 15 is dependent upon claim 12 and contains the same limitation of using a default minor number in the absence of user entry of a minor number as in claim 7. As discussed ***supra*** we find that the combination of Klosterman and Sugiyama make obvious the limitations of claim 12. Further as stated *supra* we find that Vancelett teaches and provides motivation to modify Sugiyama, to include use of a default minor channel number if one is not specified by the user.

Accordingly, we sustain the examiner's rejection of claim 15 under 35 U.S.C. § 103 (a).

**Rejection of claim 17 under 35 U.S.C. § 103 (a)**

The examiner's rejection of claim 15 under 35 U.S.C. § 103 (a) as being unpatentable over Klosterman in view of Sugiyama and Wugofski is set forth on pages 17 and 18 of the final Office action.

Appellant argues on pages 35 and 36 of the brief that similar to both Klosterman and Sugiyama, Wugofski does not teach acquiring guides that contain information mapping a broadcast channel to a different channel number as claimed.

We are not convinced by appellant's argument. As stated ***supra*** with respect to claim 12 we find that the combination of Klosterman and Sugiyama do teach acquiring guides that contain information mapping a broadcast channel to a different channel number as claimed. Accordingly, we sustain the examiner's rejection of claim 17 under 35 U.S.C. § 103 (a).

**Conclusion**

Only those arguments actually made by appellant have been considered in this decision. Arguments which appellant could have made but chose not to make in the brief or by filing a reply brief have not been considered and are deemed waived by appellant (see 37 CFR § 41.37(c)(vii)). Support for this rule has been demonstrated by our reviewing court in ***In re Berger,*** 279 F.3d 975, 984, 61 USPQ2d 1523, 1528-1529 (Fed. Cir. 2002) wherein the Federal Circuit stated that because the appellant did not contest the merits of the rejections in his brief to the Federal Circuit, the issue is waived. ***See also In re Watts,*** 354 F.3d 1362, 1368, 69 USPQ2d 1453, 1458 (Fed. Cir. 2004).

In summary, we sustain the examiner's rejections of claims 1 through 20 under 35 U.S.C. § 103 (a). However we will not sustain the examiner's rejection of claim 24 under 35 U.S.C. § 102 (e). Nor will we sustain the examiner's rejection of claims 25 through 29 under 35 U.S.C. § 103 (a). The decision of the examiner is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

**AFFIRMED-IN-PART**

LEE E. BARRETT
Administrative Patent Judge

STUART S. LEVY
Administrative Patent Judge

ROBERT E. NAPPI
Administrative Patent Judge

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